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09/524,310 03/14/00 BRABERG

L 1768.1058-00

EXAMINER

JASMIN, L

ART UNIT

PAPER NUMBER

2167

DATE MAILED:

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021005 TM02/1107
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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/524,310

Applicant(s)

BRABERG ET AL.

Examiner

Lynda C Jasmin

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 17-36 is/are rejected.
- 7) ☒ Claim(s) 8-16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the biometrics device must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to provide an adequate written description of the biometrics device. What are the structural characteristics of the device? How does it operated? Further, the biometrics device is not illustrated in the drawings. *No new matter will be allowed to be entered into the specification or drawing figures.*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 34 and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. In claims 34 and 36, the recitations "for calculating an employee's compensation", "for allowing users to calculate an employee's compensation", "for associating sets of parameters" and "for splitting the employee's shifts into sub-shifts" have not been given patentable weight because they are narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 U.S.C. 112, sixth paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 36 is rejected under 35 U.S.C. 102(b) as being anticipated by Wynn et al. (5,717,867).

Wynn et al. discloses a computer data signal embodied in a carrier wave (time clock 101) having program code for associating set of attributes (job change, special event, overtime pay, holiday, etc.) with pay categories (in employee master file) (as

illustrated in Figure 8), and program code (as described by Hours data structure A, B, C) which are used to generate reports based on different work shifts responsive to selected parameters (col. 17, lines 10-48). As broadly and indefinitely recited.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-7 and 17-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wynn et al.

Wynn et al. discloses a time and attendance system and method of calculating the same having, in a processor (104), associating sets of attributes (overtime, holiday, special event, job change or different job classification etc.) with pay categories (resulting in accounting changes and pay roll changes). Splitting the employee's shifts (regulation shift hours) into subshifts (such as particular shifts in Hours B) responsive to work parameters (as illustrated in figures 6 and 8), where for each subshift determining a set of attributes for the subshift and determining compensation for the employee (overtime pay rates and/or special pay) for the subshift responsive to an assigned pay category (col. 28, lines 26-35). The set of attributes is a unique combination of attributes (such as overtime, holiday pay or special job). The work parameters have at least one of a workplace rules, scheduled time, holiday calendars, dates and times of

the shift (as described in the employee's file) (see col. 28, lines 6-11). A mapping, configure by a user (a supervisor), which maps each set of attributes to at least one pay category, and means that determines the pay category with which the set of attributes is associated responsive to the mapping (as described in table 1). Wynn et al. further discloses punch in/out information collected by a reader encoded swiped cards (figures 3A and 3B). The punch information is stored in the database of computer 104, and collects in/out information of each employee. Also, Wynn et al. provides a system that set a threshold for a first pay category (regular pay) and defines an overflow pay category (for example overtime rates) as illustrated in Hour A, B, C data structure which are used to generate accounting and payroll records.

Wynn et al. does not explicitly disclose a method and system for calculating employee's compensation and that employee 's actual compensation is calculated based on actual attendance and applicable compensation rules collected from punch information with any or all of IN/OUT information, timestamps, and break indications.

However, the time and attendance system Wynn et al. take into account special event with different pay rates based on employee's reports to calculate both the regular employee payroll and special pay rates. From this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to clearly identify employee's compensation based on Wynn et al. different hourly wage when performing a different job in order to reward an employee.

Allowable Subject Matter

11. Claims 8-1⁶₉ are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wright (Credit Union Magazine) discloses a method of calculating employee's compensation (such as overtime pay) based on employee weekly work hours.

PR Newswire shows that Registered Nurses who agree to work an extended shift will receive a shift bonus.

Lyncheski (Journal Article) discloses how a significant number of employers were miscalculating the employees' regular rate of pay for purposes of overtime pay by not including items such as shift differential, on-call pay or bonuses.

Kato et al. discloses a time recorder capable of automatically print on a time card the work data of each worker belonging to particular working hour system, and also of summing and storing these work data.

Williams discloses a time and attendance process to update time cards and related information such payroll data.

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Bonner et al. discloses a parameter-driven time and attendance analysis system that includes one or more data entry stations for entering user time and attendance data.

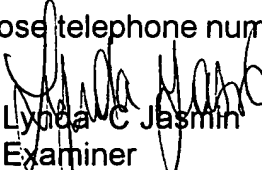
Tremaine discloses a compensation planning tool and method where compensation information preferably includes an identifier, current salary, current bonus, current salary guideline, etc.

Luebbering et al. discloses a computer program system to implement an incentive compensation plan.

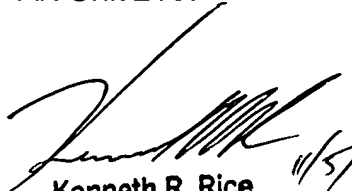
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda C Jasmin whose telephone number is (703) 305-0465. The examiner can normally be reached on Monday- Friday 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-0040 for regular communications and (703) 305-0040 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 305-3900.


Lynda C Jasmin
Examiner
Art Unit 2167

lj
November 5, 2001


Kenneth R. Rice
Primary Examiner 11/5/01